



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13618275

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a security officer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual or as an individual possessing exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed an appeal, which we summarily dismissed, concluding that the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the Director's unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v).

The matter is now before us on combined motions to reopen and reconsider. The Petitioner submits new evidence in support of his motion to reopen. He also seeks reconsideration of our decision to summarily dismiss the appeal. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Upon review, we conclude that the combined motions meet the requirements of motion to reopen and reconsider under 8 C.F.R. § 103.5(a). Therefore, the motions are granted. However, we conclude that the Director's decision is insufficient for review. Therefore, we withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

I. LAW

A. Motions

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that

the previous decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

B. EB-2 Classification

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion², grant a national

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Motions

As discussed, we summarily dismissed the Petitioner's appeal, concluding that the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the Director's unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). The Petitioner asserts that we failed to consider his previously submitted brief in support of the appeal. In support of the motion to reopen, the Petitioner provided copies of his appeal brief and a common carrier receipt indicating that he had mailed a package to our office in May 2020. Further, a review of USCIS records reflects that the Petitioner timely filed his brief in May 2020, in which he provides arguments that specifically address his contention that the Director erred in denying the petition.

Considering the Petitioner's evidence and the information contained in USCIS records, we conclude that the combined motions meet the requirements of motions to reopen and reconsider under 8 C.F.R. § 103.5(a). Therefore, we will reopen and consider the Petitioner's appeal of the Director's adverse decision.

B. EB-2 Classification

The Petitioner asserts on appeal that the Director failed to take into account the Petitioner's documentary evidence provided in support of the petition prior to his denial. We observe that the Director denied the petition, noting that "[a]fter the [P]etitioner has established . . . eligibility for second preference classification under section 203(b)(2)(A) of the [Act], [USCIS]] may grant a national interest waiver if the [P]etitioner demonstrates by a preponderance of evidence that [the criteria established in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), have been satisfied]." The Director proceeded to conduct a *Dhanasar* analysis without first concluding whether the Petitioner qualifies for the EB-2 classification.⁴ Upon *de novo* review, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as a member of the professions holding an advanced degree, or as an individual of exceptional ability. *See* section 203(b)(2) of the Act.

³ *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Similarly, in a prior request for evidence (RFE), the Director noted that "[i]n order to establish eligibility, the [P]etitioner must establish that . . . [he] qualifies for the requested classification; and [a]n exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States." However, the Director did not comment in the RFE whether the Petitioner qualifies for the requested EB-2 classification.

1. Member of the Professions Holding an Advanced Degree

To qualify as a member of the professions holding an advanced degree, a petitioner must show that his occupation meets the definition of a profession, and that he holds a qualifying advanced degree. With respect to his occupation meeting the definition of a profession, section 101(a)(32) of the Act does not include security officer in the list of professions. The Director should consider whether the Petitioner has established that a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into his occupation.

Additionally, in order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner submits a copy of his foreign academic degree and other evidence relevant to his employment as a police officer abroad, and asserts that he meets the EB-2 classification in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Director should consider whether the Petitioner has established that he holds a U.S. baccalaureate degree or its foreign equivalent, and least five years of progressive post-baccalaureate experience in the specialty.

2. Exceptional Ability

In his response to the Director’s RFE, the Petitioner asserts that he meets all of the regulatory criteria for classification as an individual of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii), with the exception of the *remuneration for services* criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). The Director should follow USCIS’ two-step analysis to evaluate the evidence submitted with the petition to determine whether the Petitioner demonstrates eligibility for the EB-2 classification as an individual of exceptional ability. *See* 6 USCIS Policy Manual F.5, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5> (last visited July 23, 2021).

3. National Interest Waiver

We note that, regarding the Petitioner’s remaining claims of eligibility under the *Dhanasar* analysis, we agree with the Director’s ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner’s statements reflect his intention to continue working in his field as a security officer in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the record in this matter does not demonstrate that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his future employer(s) and clients such that it would impact U.S. interests or the law enforcement industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

For the reasons discussed above, we are remanding the petition for the Director to consider whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest waiver cases. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The motions are granted. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.